STATE OF MICHIGAN

COURT OF APPEALS

INDIAN RIVER AREA TOURIST BUREAU, Plaintiff-Appellee,	UNPUBLISHED June 14, 2005
v	No. 253420 Cheboygan Circuit Court
DUANE SHANK, d/b/a BRENTWOOD, Defendant-Appellant.	LC No. 01-006929-CZ

Before: Hoekstra, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

In this dispute over unpaid tourist marketing fund assessments, defendant, operator of a guest cabin business in Cheboygan County, appeals as of right from a judgment for $26,478.73 in damages and a finding that he runs a "transient facility" required to make assessments under the Community Convention or Tourism Marketing Act (the Act), MCL 141.871 *et seq.* We affirm.

The Act authorizes creation of local non-profit tourism promotion bureaus funded by an assessment on local tourism facilities. Plaintiff is one such bureau. Under the Act, owners of member "transient facilities," MCL 141.872(m), pay two percent of their facility's monthly room charges to the bureau serving their area. MCL 141.875. Plaintiff wrote to defendant in December 1998 to notify him that he was required to pay the assessment and to request that he pay overdue assessments. The trial court concluded that defendant was liable for the marketing assessments. However, defendant argues that he was not liable for the assessments because he did not receive a "marketing program notice" when he assumed ownership of the property. We disagree. This presents an issue of law, which we review de novo. *Duggan v Clare Co Bd of Comm'rs*, 203 Mich App 573, 575; 513 NW2d 192 (1994). We are required to construe statutes using their plain language. *Pohutski v Allen Park*, 465 Mich 675, 683-684; 641 NW2d 219 (2002).

The Act requires that certain facility owners pay an assessment to the bureau. MCL 141.875(1). As defendant argues, the liability for the assessment begins after "a marketing program notice has been mailed to the transient facility of the owner pursuant to section 3" of the Act. MCL 141.875(5). However, the plain language of the Act only specifies that the marketing program notice be sent out when the program is first established: "Simultaneously with the filing of the marketing program notice with the director, the bureau shall mail a copy of the notice . . . to each owner of a transient facility." MCL 141.873(7). Except by a referendum of

the membership to discontinue the assessment, MCL 141.878, there is nothing in the Act that allows a transient facility owner to stop paying assessments. Defendant is within the class of owners liable for the assessment. MCL 141.875(1) ("Upon the effective date of an assessment under section 3a, *each owner* of a transient facility in the assessment district shall be liable for payment of the assessment." [Emphasis added.]). Harry Manhart, plaintiff's president, testified that the prior owners of defendant's property received the mailing sent out when the tourist bureau was established in 1992.

Defendant's argument would require tourist bureaus to send a separate notice to each new owner, a reading not suggested by any other text in the Act. Further, defendant cannot avoid this legal liability by claiming ignorance. "One engaged in business in this state is presumed to know the law as it relates to the operation of that business." *American Way Service Corp v Comm'r of Ins*, 113 Mich App 423, 433; 317 NW2d 870 (1982). Therefore, defendant has not shown that the court erred in concluding that defendant was properly assessed and owed the payments due under the Act.

Defendant next argues that the court erred by disregarding his laches defense and computing the assessments owed back to 1996, when he became owner of the property, rather than to December 1998. We again disagree. We review application of laches for clear error. *City of Jackson v Thompson-McCully Co, LLC*, 239 Mich App 482, 492; 608 NW2d 531 (2000)

Laches will bar a claim where the passage of time, caused by a lack of due diligence by the plaintiff, results in prejudice to the defendant, making it inequitable to enforce the plaintiff's claim. *Id*. at 494. Further, laches is "an equitable defense to a claim that may be invoked when the delay in bringing a claim prejudices the other party." *Great Lakes Gas Transmission Co v MacDonald*, 193 Mich App 571, 577; 485 NW2d 129 (1992), citing *Lothian v Detroit*, 414 Mich 160, 168; 324 NW2d 9 (1982). "It is the effect, rather than the fact, of the passage of time that may trigger the defense of laches." *Id*. at 578. "[A] lack of due diligence alone is not sufficient. The defense of laches does not apply unless the delay of one party has resulted in prejudice to the other party." *Troy v Papadelis* (*On Remand*), 226 Mich App 90; 572 NW2d 246 (1997).

Because there was no prejudice here attributable to plaintiff, the trial court did not clearly err in disregarding the claim of laches. Defendant offers no evidence of any material prejudice resulting from the delayed legal challenge except to argue that it resulted in the loss of relevant documents due to his habit of destroying financial records. But defendant also testified that he retained his records for three years before destroying them. Therefore, when defendant received the assessment notice in 1998, he would have had the records on hand for 1995-1997. Thus, it was defendant's choice to destroy records that he should have realized were likely to be necessary to resolution of a dispute over the assessment. Because defendant has shown no harm caused by delay that could be attributed to plaintiff, laches is inapplicable here.

Finally, defendant argues that the trial court should not have awarded damages for any period after the filing of the complaint. The court concluded that "obviously this is an ongoing problem and damages continue to accrue daily, so I don't think we need to render a decision as to 2001 and then be back here next year and litigate 2002 and 2003." Defendant argues that this was clear error, because plaintiff's complaint was filed in 2001 and the court should have limited the damages to the date of filing. We agree with the reasoning of the trial court. Damages

awards are reviewed for clear error. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176-177; 530 NW2d 772 .

The trial court issued its final order in December 2003, awarding damages, interest and penalties from "October 1996 thru September 2002." Under MCL 141.875(1), the tourism assessment is due within thirty days of the end of each calendar month. Under MCL 141.875(4), interest and delinquency charges are owed for each "month or fraction of a month on . . . delinquent assessments." The case defendant cites, *Hartley v A I Rodd Lumber Co*, 282 Mich 652; 276 NW 712 (1937), has nothing to do with the case at bar, where plaintiff's theory was unchanged throughout. Therefore, the court did not clearly err in awarding damage, interest, and penalties through September 2002.[1]

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly

[1] Indeed, on the date of the final judgment, defendant owed the assessment through November 2003 and interest and penalties through December 2003.